IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10/12/2003

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THE HONOURABLE MR.JUSTICE V.S.SIRPURKAR
AND
THE HONOURABLE MR.JUSTICE N.KANNADASAN

WRIT APPEAL No.731 of 1999

Arul Anand ... Appellant/
petitioner

-Vs-

1. The Oil & Natural Gas Commission,
rep.by its Chairman, Dehradun,
U.P.State.

2. The Regional Director,
Southern Region, Business Centre,
Oil & Natural Gas Commission,
Thalamuthu Natarajan Building,
Egmore, Chennai-600 008.

3. The General Manager (P & A),
Southern Region Business Centre,
ONGC, Chennai-8. ... Respondents/
Respondents

Writ Appeal under Clause 15 of Letters Patent against the
order of the learned Single Judge in W.P.No.13797 of 1990, dated 29.10.1998.

!For Appellant .. Mr.N.G.R.Prasad, for
M/s.Row & Reddy.

^For Respondents.. Mr.M.S.Krishnan, for
M/s.Sarvabhauman Associates.

:JUDGMENT

(Judgment of the Court was delivered by V.S.SIRPURKAR,J)

This appeal is by an unsuccessful petitioner who had
challenged before the learned Single Judge the Memorandum-cum-Order, dated
17.7.198 9, which held that since no junior person to the petitioner had
joined, he would be deprived of the advantage of the consideration for

promotion and the relaxation in the matter of experience.

2. The facts are peculiar. The petitioner was selected as Assistant Marine Radio Operater in the respondents organization. His pay scale was to be Rs.725-1480. After his selection as an Assistant Marine Radio Operator, he joined duty on 9.1.1985. There appears to be a policy decision taken by the General Manager, wherein it was considered that those employees in the pay scale of Rs.725-1480, who have put in a minimum of one year of service in that pay scale as on 31.12.198 5, may be considered for appointment by selection to the post in the pay scale of Rs.1030-2000 in their respective disciplines with effect from 1.1.1986. This decision seems to have been taken on 3.1.1989 by which time the petitioner had already put in about four years of service.

3. There is a document on record, dated 17th February, 1989, in which a policy decision is taken regarding counting of qualifying service for the purpose of promotion in respect of the direct inductees, like the petitioner. It is noted therein that sometime persons are given offer of appointment against direct recruitment around December of a particular year and asked to join duty within 45 days from the date of receipt of the order. Some persons joined immediately before the end of December and some others in the month of January or February but, within 45 days. Now, those persons who joined after 31st December of that particular year are not able to complete one year of service by the close of 31st December of next year, because they have joined after 31st December in the previous year. A decision then taken that in case of the direct inductees, where such candidates are offered the post during the preceding year and if they joined within 45 days, as per the conditions of offer of appointment, relaxation in experience to the extent of maximum of 45 days may be allowed irrespective of the fact that they have joined in January/February of the next year. It is expressed in this communication as under.

"4. .... However, those who join after 45 days and in whose seniority is lost due to late joining they will not be considered along with others unless they complete the minimum qualifying service laid down for promotion to the next grade."

In short, a decision was taken to condone the loss upto 45 days where a candidate has been given an order earlier but has not joined by 31 st of December and has chosen to join within 45 days as per the order but, beyond 31st December of that year. There is further a letter to be found, dated 28th March, 1989, which clarifies that the instructions in the 17th February, 1989 letter would be prospective. So far so good.

4. It seems that the petitioner since had joined in January, he was however not given this advantage and it was held that he did not have one year of experience upto 31.12.1985. This decision obviously was taken on the basis of the clarification, which was issued, dated 19 th April 1989. In this clarification, it was suggested that the instructions in the letters, dated 17th February, 1989 and 28th March, 19 89, would be subject to the following conditions.

(a) The recruitment would have been finalised in a particular year before 31st December of that year; and

(b) The panel should have been operated in the same year fully or partially before 31st December of that year; and

(c) One or more candidates junior to the one who had joined in subsequent year but within 45 days as stipulated in the offer of appointment and also that the concerned senior should have also joined within 45 days of the receipt of offer of appointment by him.

It seems that the petitioner was refused the relaxation of experience and it was held that he had not completed one year's experience by 3 1st December, 1986. He therefore made a representation, dated 26th May, 1989, relying on the policy decision, dated 17th February, 1989, to which we have already adverted. His representation, dated 26th May, 1989, was rejected on the ground that the third condition of the above conditions was not fulfilled in his case, since there was no junior who had already joined and therefore he could not be given any relaxation. He challenged this by way of a writ petition. The learned Single Judge, however, has dismissed the writ petition necessitating the present appeal.

5. The learned counsel for the petitioner Mr.Prasad argues that the third condition inflicted by letter, dated 19th April, 1989, was obviously unreasonable, arbitrary and discriminatory. The learned counsel argues that the post of the petitioner is an All India Post and he could be posted, after his appointment, to any place where the organization has its establishment. He points out that in so far as the policy decision taken on 17.2.1989 is concerned, it was perfectly in tune and provided a generally applicable principle for relaxation of the experience condition. Learned counsel points out that it was quite reasonable for the organization to lay down a policy decision that where a person, though appointed before 31st December, joins within 45 days and then stands to lose one year's service on account of his having joined after 31st December, such lack of few days experience may be relaxed. However, when the respondents laid down three further conditions and more particularly, the condition regarding a junior being there, such would be completely discriminatory and arbitrary . The learned counsel says that all these aspects regarding the inherent arbitrary nature of the impugned order and the policy has been completely missed by the learned Single Judge and the learned Single Judge has merely gone on the wordings of the three conditions more particularly the third condition. The learned counsel very fairly agrees that if the policy as laid down on 19th April, 1989, is followed, then there will be no question of his getting any relaxation. However, the learned counsel argues that the laying down of the three conditions, by reframing the policy, on 19th April, 1989, was itself completely contrary to the principle of fair administration. Learned counsel points out that the learned Single Judge has completely ignored this aspect.

6. As against this, Mr.M.S.Krishnan, who appears on behalf of the organization, supports the order and suggests that this policy was created to see that an otherwise junior person should not be allowed to steal a march over a senior person, merely because such junior person has joined earlier and that was the only objective of framing this policy. In short, the learned counsel says that where, in a batch, ten persons are selected, it would be obvious the person selected at No.1 would always be considered as senior to a person who has been selected at No.10. However, where a person who is selected at No.10 but chose to join immediately on getting the order before 31st December of that year, would be able to complete the one year of service

by next December, whereas the person who is selected at No.1, merely because he has joined the service after 31st December of that year, somewhere in January, should not be allowed to be deprived of the advantage on completion of one year's of service. In short, the learned counsel argues that the policy was in order to avoid the inter-se dispute in the seniority and not by way of providing a general relaxation and if viewed from this angle, then there would be nothing arbitrary or discriminatory in the policy. He points out that when the petitioner joined, no person in his batch junior to him had earlier joined and therefore there was no question of any inter-se clash of seniority between the petitioner and such person and therefore there was no question of ignoring the petitioner's lack of experience atleast for a few days.

7. It is the admitted position that the cut-off date is 31st December of that particular year and that the petitioner had joined on 9.1.1986. Therefore, the question is whether the petitioner was liable to be given relaxation of those days relying on the policy, dated 17.02.1989 or whether he should be deprived of that relying on the amended policy, dated 19.4.1989.

8. Seeing the order of the learned Single Judge, we see that the learned single Judge has merely referred to the three conditions in the communication, dated 19th April, 1989 and has deduced that as per those conditions the petitioner was rightly deprived of the relaxation and the relaxation could not have been claimed as of right. Viewed from this angle, there is nothing to interfere with the order of the learned Single Judge. However, the question is as to whether the amended policy, dated 19th April, 1989, is a correct one or is it a discriminatory policy. After hearing the learned counsel, we are quite convinced that the policy, dated 19.04.1989, is undoubtedly discriminatory and unreasonable also.

9. When we see the earlier policy, dated 17.02.1989, it is obvious that that was a policy made for giving a relaxation to such persons who are not able to complete one year's experience because they have joined after 31st December, though they have been selected earlier. Such persons are within their rights to join after 31st December because in the order itself they are provided with 45 days time to join. If that be so, then there will be no question that they have violated any order. The policy was framed only because it was seen that some of the persons who are selected at the lower place in merit joined earlier to 31st December and therefore they are capable of completing one year of service by the next 31st December, whereas, a more meritorious person, who has been selected at the higher place in merit list, merely because he has joined after 31st December, is not capable of complying that condition of one year service which entitles him to better pay or promotion. In order to allay this particular grievance, the policy was framed

and in our opinion, correctly. Further, this policy, as we see, can be universally made app licable all over India in all the Regions, because such situation would be common in respect of all the services and all the posts.

10. On this backdrop, we see the policy, dated 19.04.1989.

It is obvious that a fortuitous circumstance of a junior joining is introduced to deprive the otherwise eligible employee to have the benefit of relaxation. We take an example. In the same batch, ten persons might have been selected. Three out of them might have joined in Bombay and other three in Madras and remaining four in Gauhati and whereas in other places, there may be some juniors who joined before 31st December. There may not be any junior person joined in Madras. Could then, the advantage be made available only to the persons joined at Bombay and Gauhati merely because the junior persons have joined earlier and not to those persons joined in Madras, could they lose the advantage merely because juniors have not joined here. This is incongruous and this is fortuitous also.

11. When a principle is to be culled out for relaxation of the particular number of days of service, the policy has to be such which has a universal application. This present policy, which depends on the fortuitous circumstances, would obviously not stand the test of Article 14 of the Constitution of India. Such policy would be capable of discriminating and that too, without there being anything in the hands of the concerned employees. It is not by a choice that the employee would be posted to the place. That would be for the administration to do. But merely because there is an accident of the junior being there in Bombay and Guahati and no such junior in Madras, the person joining at Madras, should not be deprived of the benefit, which is otherwise available to him, especially when such benefit is granted to the persons who had joined where juniors have already joined. Denial of such benefit or relaxation which depends on a fortuitous circumstance, like the junior being there or not there, would obviously not answer the acid test of Article 14 of the Constitution. By this itself we find that the policy, dated 19th April, 1989, is not only unreasonable but capable of being abused. In the case of the petitioner, it was not his fault that no juniors before him who were in the same batch had joined before 31st December. It is obvious that his counterparts joined at another place, where juniors have chosen to so join, would have that advantage of the relaxation, whereas similarly placed petitioner would be deprived of such a benefit of relaxation. In that view, we do not find that this policy is a sound policy. We would choose to quash the same.

12. Therefore, allowing the writ appeal, we set aside the order of the learned Single Judge and make the Rule in the writ petition absolute in terms of the prayers made. Needless to say that the petitioner shall be considered on the basis of the observations made by us, if he is otherwise entitled to the benefit, under the Rules. No costs.

Index: Yes.
Internet:Yes.

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To:

1. The Chairman,

The Oil & Natural Gas Commission,
Dehradun,
U.P.State.

2. The Regional Director,
Southern Region, Business Centre,
Oil & Natural Gas Commission,
Thalamuthu Natarajan Building,
Egmore, Chennai-600 008.

3. The General Manager (P & A),
Southern Region Business Centre,
ONGC, Chennai-8.